

ARTHUR E. MEINHART, IRWIN RUBENSTEIN, Appellants  
BRUCE ANDERSON, Appellee

IBLA 71-110  
IBLA 71-242  
IBLA 71-243

Decided May 12, 1972

Appeals from decisions by Eastern States land office, Bureau of Land Management, rejecting acquired lands oil and gas lease offers, ES 7251, 7253, 7254 and 7259 (Fla.).

Reversed.

Oil and Gas Leases: Application: Description -- Oil and Gas Leases: Cancellation -- Oil and Gas Leases: First Qualified Applicant -- Oil and Gas Leases: Description of Land

The description in an acquired lands oil and gas lease offer of a parcel of unsurveyed land without metes and bounds showing courses and distances between successive angle points and a tie by course and distance to a nearby official survey corner is defective, and a lease issued pursuant to the offer must be canceled where a junior offer properly describes the land in conformity with the regulations.

Survey of Public Lands: Authority to Make -- Mineral Leasing Act for Acquired Lands: Generally -- Oil and Gas Leases: Acquired Lands Leases

The subdivision of acquired lands of the United States into a rectangular system having aliquot parts similar to those employed in the public land surveys does not make the lands so designated "surveyed" within the ambit of the regulations under the Mineral Leasing Act for acquired Lands when the plat of the survey has not been approved by the Director, Bureau of Land Management.

APPEARANCES: Arthur E. Meinhart, Irwin Rubenstein, pro se. Bruce Anderson, pro se.

## OPINION BY MR. HENRIQUES

Arthur E. Meinhart and Irwin Rubenstein have appealed from four separate decisions by which the Eastern States Land Office, Bureau of Land Management, rejected their non-competitive oil and gas offers to lease acquired lands of the United States in the State of Florida, to the extent that the lands described in the offers were included in existing oil and gas leases issued to Bruce Anderson. 1/ As each appeal involves the same issue for convenience, they will be consolidated for consideration.

The appellants contend that the lands involved are unsurveyed acquired lands of the United States, that the offers of Anderson were defective for failure to describe properly the acquired land sought to be leased, and that their offers properly describing the lands made them the first qualified offerors, so they should have been granted the leases.

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1/ Offers filed May 25, 1970, by Meinhart and Rubenstein, with metes and bounds descriptions.

ES 7253 All section 29, E 1/2, SW 1/4 section 30, all section 31,  
all section 32, T. 3 S., R. 8 W., T.M.

ES 7259 All sections 27, 28, 33, 34, T. 3 S., R. 8 W., T.M.

ES 7254 E 1/2 NE 1/4, SE 1/4 section 12, T. 4 S., R. 9 W., T.M.  
and other lands not in conflict with any Anderson offer  
for which a lease was issued March 1, 1971.

ES 7251 All sections 13 and 24, T. 4 S., R. 9 W., T.M. (Some of the lands in  
these sections are not owned by the United States;  
the offer was rejected as to those, and no appeal was taken.)

Leases issued to Bruce Anderson in response to offers filed May 22, 1970

ES 7236 dated October 1, 1970 All sections 27, 28, 29, SW 1/4,  
E 1/2 section 30, T. 3 S., R. 8 W.,  
T.M.

ES 7237 dated October 1, 1970 All sections 31, 32, 33, 34, T. 3  
S., R. 8 W., T.M.

ES 7239 dated February 1, 1970 SE 1/4, E 1/2 NE 1/4; section 12,  
E 1/2 W 1/2 NE 1/4 NW 1/4, E 1/2  
NE 1/4 NW 1/4, S 1/2 SW 1/4 NW 1/4,  
SE 1/4 NW 1/4, E 1/2, E 1/2 SW 1/4,  
N 1/2 NW 1/4 SW 1/4, SE 1/4 NW 1/4  
SW 1/4; section 13, E 1/2 NE 1/4  
SW 1/4, E 1/2 SE 1/4 NW 1/4, E 1/2  
W 1/2 NE 1/4 NW 1/4, E 1/2 NE 1/4  
NW 1/4, NE 1/4, N 1/2 SE 1/4,  
N 1/2 S 1/2 SE 1/4; section 24, T.  
4 S., R. 9 W., T.M.

In reply, Anderson asserts that his leases were properly issued in response to his legal land descriptions because the lands have been surveyed under the rectangular system of public land surveys. He also suggests that if his leases are canceled, the offers of Meinhart and Rubenstein would be of no avail as the land would be unavailable for leasing except under the simultaneous filing procedures.

The files show that the Anderson offers were received by the land office on May 22, 1970, as over-the-counter filings. Each offer described the land sought by subdivision, section, township and range, as though properly surveyed. The Meinhart-Rubenstein offers were received on May 25, 1970, each offer describing the land sought by metes and bounds, giving course and distance between successive angle points and a connection to an official corner of the public land surveys, as though they were unsurveyed, and each offer was accompanied by a map upon which the desired lands were clearly marked with respect to the National Forest of which they are a part.

The State of Florida was created out of the public domain from land added thereto by cession from the Kingdom of Spain in 1819. The state was admitted to the Union on March 3, 1845. 5 Stat. 742. As a public domain state, Florida is within the area of the rectangular system of public land surveys.

The official records of the Bureau of Land Management show that the lands involved in these appeals were never subdivided under the rectangular system of public land surveys, and delineated on a plat approved by the Director, Bureau of Land Management, or his predecessor, the Commissioner, General Land Office, so they must be considered as being "unsurveyed" within the context of the pertinent oil and gas regulations. These lands are part of a private land claim embracing more than 1,400,000 acres confirmed by patent dated June 9, 1842, pursuant to the treaty of February 22, 1819, between Spain and the United States and authorized by § 6 Act of May 23, 1828. 4 Stat. 285. See Mitchel v. United States 9 Peters 711 (1835). The subject lands were repurchased by the United States pursuant to the Weeks Act of March 1, 1911, 16 U.S.C. § 513-519, 521 (1970), as part of a transaction known as the "Forbes Purchase." The lands are now being administered by the United States Department of Agriculture as part of the Apalachicola National Forest.

Subdivision of acquired lands of the United States by the Forest Service or by other agency, either Federal or State, and designation of such subdivisions by identities similar to those which might be

attached to the lands if the rectangular system of public land surveys had been extended over them, does not make the lands "surveyed" within the context of the oil and gas regulations. The surveying of the public lands is an administrative act confided to the Director, Bureau of Land Management, under the direction of the Secretary of the Interior. 43 U.S.C. § 2 (1970). It follows then that only those plats of survey approved by the Director, Bureau of Land Management, are entitled to be included within the rectangular system of public land surveys. No such approval has been given to any purported survey within the Forbes Purchase area.

The regulations provide that if the land described in an oil and gas offer to lease has not been surveyed under the rectangular system of public land surveys and is within the area of such surveys, the land must be described by metes and bounds, giving course and distance between successive angle points on the boundary of the tract, and be connected to a reasonably nearby corner of the public land surveys by courses and distances. 43 CFR 3101.2-3(a). An offer for an acquired lands oil and gas lease covering land which has not been surveyed under the rectangular system of public land surveys must be rejected where the offer does not describe the land by metes and bounds, giving courses and distances and a tie to a public land survey corner. Hugo H. Pyes, A-30541 (June 9, 1966).

The land office had posted these subject tracts, with metes and bounds descriptions, partly in January 1961 and partly in March 1961, on the monthly list of lands available to oil and gas leasing under the simultaneous filing procedures in 43 CFR 192.43 (now designated as 43 CFR 3112.1-2). No offers to lease any of the subject tracts were received during the simultaneous filing periods designated in the notices.

Where an oil and gas lease was issued pursuant to an offer which did not describe the land correctly as required to the regulations, and a subsequent offer to lease, correctly describing the land in conflict, was pending when the lease issued, the lease must be canceled so that the junior offeror's statutory preference right to a lease may be satisfied. F. W. C. Boesche, A-27997 (August 5, 1959), aff'd Boesche v. Udall, 373 U.S. 472 (1963). See Jacob N. Wasserman, 74 I.D. 392 (1967). Therefore, the three leases issued to Bruce Anderson must be and hereby are canceled in toto.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 D.M. 13.5; 35 F. R.

12081), the land office decisions are reversed and the cases are remanded to the Bureau of Land Management for appropriate action consistent with this decision.

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Douglas E. Henriques, Member

We concur:

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Joseph W. Goss, Member

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Anne Poindexter Lewis, Member

